



1 ALICE CHANG (SBN 239761)  
2 alicechangjdmba@gmail.com  
3 1301 Kenwood Road, Unit 159B  
4 Seal Beach, CA 90740  
5 Telephone: (714) 507-6161

6 ELIOT J. RUSHOVICH (SBN 252343)  
7 eliot@riselawfirm.com  
8 RISE LAW FIRM, PC  
9 8383 Wilshire Boulevard, Suite 315  
10 Beverly Hills, CA 90211  
11 Telephone: (310) 728-6588

12 *Attorneys for Relator and Plaintiff-Relator*

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 [UNDER SEAL],

16 Plaintiffs,

17 v.

18 [UNDER SEAL],

19 Defendants.

CASE NO. CV 18-08311-ODW (AS)

EX PARTE APPLICATION FOR HEARING  
AND DISCLOSURES PRIOR TO  
UNSEALING

[FILED UNDER SEAL PURSUANT TO  
THE FALSE CLAIMS ACT, 31 U.S.C. §§  
3730(b)(2)]

[FILED/LODGED CONCURRENTLY  
UNDER SEAL: [PROPOSED] ORDER;  
DECLARATION OF ALICE CHANG WITH  
EXHIBITS]

20 [FILED IN CAMERA AND UNDER SEAL  
21 PURSUANT TO 31 U.S.C. § 3730(b)(2)]

1 ALICE CHANG (SBN 239761)  
alicechangjdmba@gmail.com  
2 1301 Kenwood Road, Unit 159B  
Seal Beach, CA 90740  
3 Telephone: (714) 507-6161

4 ELIOT J. RUSHOVICH (SBN 252343)  
eliot@riselawfirm.com  
5 RISE LAW FIRM, PC  
8383 Wilshire Boulevard, Suite 315  
6 Beverly Hills, CA 90211  
Telephone: (310) 728-6588

7 *Attorneys for Relator and Plaintiff-Relator*

8 UNITED STATES DISTRICT COURT  
9  
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA ex  
rel. IONM LLC, a Delaware  
corporation and ex rel. JUSTIN  
12 CHEONGSIATMOY, M.D.; STATE  
OF CALIFORNIA ex rel. IONM LLC,  
13 a Delaware corporation and ex rel.  
JUSTIN CHEONGSIATMOY, M.D;  
14 LOS ANGELES COUNTY ex rel.  
IONM LLC, a Delaware corporation  
15 and ex rel. JUSTIN  
CHEONGSIATMOY, M.D.; and  
16 JUSTIN CHEONGSIATMOY, M.D.,  
in his individual capacity,

17 Plaintiffs,

18 vs.

19 UNIVERSITY OF SOUTHERN  
20 CALIFORNIA, a California  
corporation;

21 and

22 USC CARE MEDICAL GROUP,  
23 INC., a California corporation,

24 Defendants.

CASE NO. CV 18-08311-ODW (AS)

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25  
26 Pursuant to 31 U.S. Code § 3729 *et seq.*, Central District Local Rule 7-19 and 7-  
27 19.1, and the Honorable Otis D. Wright, II's standing orders, Relator IONM LLC and  
28

1 Plaintiff-Relator Justin Cheongsiatmoy, M.D. (collectively “Relator” or “Plaintiff-  
2 Relator” or “Dr. Cheongsiatmoy”) hereby submits this *Ex Parte* Application for a  
3 Hearing and Disclosures Prior to Unsealing (the “Application”). The purpose of this  
4 application is to ensure that the actions taken, or to be taken, by the United States of  
5 America, State of California and Los Angeles County (“Government Parties”) have not  
6 unduly prejudiced any parties of interest including Dr. Cheongsiatmoy with respect to  
7 his individual claims based on the same operative facts that underlie the *qui tam* claims.

8 A party seeking *ex parte* relief must establish why a motion cannot be calendared  
9 in a regular manner; that there will be irreparably prejudiced if the motion is heard in  
10 accord with regular procedures; and that the requesting party is without fault in creating  
11 the crisis that requires *ex parte* relief or that the crisis was due to excusable neglect.”  
12 *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

13 This application stems from knowledge first learned by Dr. Cheongsiatmoy  
14 outside the period during which a regularly scheduled motion could have been heard  
15 while the case remained sealed prior to December 30, 2021; despite multiple attempts to  
16 meet and confer with the Government parties to eliminate the necessity of a hearing on  
17 prejudice to the case before it unseals; the issues remain unresolved; thus, the reason for  
18 this *ex parte* application.

19 On December 6, 2021, Ms. Chang and Mr. Rushovich were informed for the first  
20 time from the United States of America that six weeks prior, on October 27, 2021, the  
21 United States had completed its investigation and disclosed to University of Southern  
22 California and USC Care Medical Group, Inc. (collectively “Defendant” or “USC”) the  
23 operative Complaint without any exhibits containing Dr. Cheongsiatmoy’s claims. The  
24 United States made these disclosures to the Defendant without notice to and without  
25 consent of either Relator IONM LLC or Plaintiff-Relator, Dr. Cheongsiatmoy.

26 The United States admitted that it had made these disclosures “in the interests of  
27 reviving negotiations” to settle the *qui tam* claims brought by Plaintiff-Relator on the  
28

1 basis of USC's March 27, 2020 Non-Confidential Voluntary Self-Disclosure ("USC  
2 Disclosure") in order to further the "position of the United States that negotiations  
3 regarding employment-related claims should take place separately from (and subsequent  
4 to) negotiations regarding allegations arising under the False Claims Act."

5 While the False Claims Act seal process is intended to allow the Government time  
6 to investigate allegations filed by a *qui tam* relator to determine whether or not to  
7 intervene, it is *not* designed for the Government to give the Defendant an unfair advantage  
8 at the expense of the Plaintiff-Relator and his individual claims, especially since Dr.  
9 Cheongsiatmoy's claims are based on the same underlying facts. Dr. Cheongsiatmoy,  
10 therefore, seeks the Court's intervention to address the prejudice that has resulted from  
11 the Government Parties' use of the seal to run roughshod over a Plaintiff-Relator's  
12 individual claims. This motion is being filed *ex parte* because irreversible damage will  
13 occur if the Court allows the case to unseal without a hearing, particularly given that the  
14 seal is set to expire on December 30, 2021.

15 Plaintiff-Relator has made the required attempts to meet and confer with all parties,  
16 given notice to all parties of his intent to file this Application, and has otherwise complied  
17 with all rules with respect to this filing. Plaintiff-Relator has been advised that the United  
18 States of America and the State of California intend to oppose this Application. Los  
19 Angeles County and Wilbanks & Gouinlock have not indicated whether they intend to  
20 oppose this Application. This Application is based on this filing, the attached  
21 Memorandum of Points and Authorities and Exhibits thereto filed concurrently herewith,  
22 on all records on file in this case, and on such other evidence as may properly come before  
23 the Court at the time of any hearing of this Application.

24  
25 Dated: December 28, 2021

ALICE CHANG

26 /s/ Alice Chang

27 Attorneys for Relator and Plaintiff-Relator

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. BACKGROUND**

#### **A. Initial Complaint and Subsequent Amendments.**

On or about September 26, 2018, Relator IONM LLC filed in camera and under seal its initial Complaint against Defendant asserting violations of the Federal False Claims Act, the California False Claims Act and the California Insurance Frauds Prevention Act. On or about January 25, 2021, Relator filed in camera and under seal its First Amended Complaint. On or about May 5, 2021, Relator filed in camera and under seal its Second Amended Complaint (“SAC”), identifying Plaintiff-Relator Justin Cheongsiatmoy, M.D. as a Co-Relator in his personal capacity and adding his related individual claims. On or about June 25, 2021, Relators filed in camera and under seal their Third Amended Complaint (“TAC”). On or about September 20, 2021, Relators filed in camera and under seal their Fourth Amended Complaint (“4AC”). The 4AC is the operative complaint. This case remains under seal until December 30, 2021.

#### **B. No Consent for Order Partially Lifting Seal and Extension(s) of Seal**

The Court issued an June 23, 2020 Order Partially Lifting Seal to allow the United States, in its discretion, to “(A) disclose to Defendant...and its counsel the existence of this action, any of the allegations of the Complaint, and any subsequently-filed amended Complaint filed in the above-captioned action; and (B) provide USC with...any of the said Complaints, redacted or not (the “June 23, 2020 Order Partially Lifting Seal”).

The United States sought the June 23, 2020 Order Partially Lifting Seal based upon its representation that the partial lift of the seal “may help expedite the conclusion of the Government’s investigation and the resolution of this *qui tam* action.” At the time the June 23, 2020 Order Partially Lifting Seal was entered, the operative Complaint contained only *qui tam* claims and not Dr. Cheongsiatmoy’s individual claims.

At the time the United States sought the June 23, 2020 Order Partially Lifting Seal, and at any time subsequent thereto, the United States had a duty, as an officer of the Court,

1 to truthfully inform the Court that there was no consent from Relator to partially lift the  
2 seal to disclose Relator's *qui tam* allegations to Defendant. The Court, therefore, should  
3 have been informed that the United States was aware that Relator IONM LLC did not  
4 consent to the partial unsealing of the Complaint based on the fraudulent nature of the  
5 USC Disclosure; the lack of consent from Relator IONM LLC for the June 23, 2020 Order  
6 Partially Lifting Seal was reiterated to the United States in writing on April 22, 2021.

7 (Declaration of Alice Chang ("Chang Decl."), ¶ 7.)

8 As it relates to consent for extension(s) of the seal, the first time any Relator in this  
9 action was asked to provide consent for any seal extension was on December 17, 2020  
10 when Cotchett, Pitre & McCarthy, LLP ("former counsel") gave notice of intent to  
11 withdraw following former counsel's refusal to file an amendment in this action to  
12 provide truthful evidence as to the extent of Defendant's fraud. (Chang Decl., ¶ 3.)

13 On December 17, 2020, Relator responded to the request for extension of the seal  
14 stating that Relator had never been requested to approve or consent to any action related  
15 to the seal in this case and needed further clarification as the reasons for the seal extension  
16 and ramifications to Relator; former counsel did answer Relator's request to explain the  
17 basis for the request to extend the seal. (Chang Decl., ¶ 3.)

18 On December 18, 2020, former counsel instructed the United States in writing to  
19 "file the [seal extension] application with the court and indicate Relator has not  
20 responded." (Chang Decl., ¶ 4.) To date, the United States has continued to refuse to  
21 confirm that the Court was truthfully informed that there was no consent from Relator to  
22 extend the seal per the written instructions from former counsel.

23 Further, Dr. Cheongsiatmoy only became a Co-Relator in his personal capacity  
24 with individual claims concurrent with the filing of the Second Amended Complaint in  
25 May 2021. However, the United States did not seek the consent Dr. Cheongsiatmoy prior  
26 to disclosing his claims to Defendant on October 27, 2021.

1           **C.       The United States’ Instruction(s) on the Seal**

2           On June 21, 2021, employment counsel Eliot Rushovich and his firm, Rise Law  
3 Firm, PC entered an appearance in this case.

4           On July 9, 2021 Mr. Rushovich emailed all participating government entities Dr.  
5 Cheongsiatmoy’s work product for the Third Amended Complaint (TAC) with the  
6 primary theory of false claims liability identified as services not rendered by USC  
7 surgeons and USC neurologists; AUSA Kortum then emailed all participating  
8 government entities “in response to [Mr. Rushovich’s] 7/9 letter,” stating that he had left  
9 Mr. Rushovich a voicemail requesting to speak with Dr. Cheongsiatmoy’s counsel.  
10 (Chang Decl., ¶ 9.)

11           On a July 13, 2021 telephonic conference, Assistant United States Attorney Frank  
12 Kortum (“AUSA Kortum”) expressly instructed Ms. Chang and Mr. Rushovich that, due  
13 to the seal order, they and their clients were not permitted to have any contact with the  
14 Defendant *at all* regarding this case -- whether with regard to Dr. Cheongsiatmoy’s *qui*  
15 *tam* or with regard to Dr. Cheongsiatmoy’s individual claims -- until AUSA Kortum  
16 officially notified Ms. Chang and Mr. Rushovich that the Government had completed its  
17 investigation and was ready to disclose to USC a copy of the Complaint containing Dr.  
18 Cheongsiatmoy’s allegations. (Chang Decl., ¶ 10.)

19           On a September 30, 2021, Ms. Chang emailed all participating government entities  
20 Dr. Cheongsiatmoy’s work product for the Fourth Amended Complaint (4AC) with the  
21 primary theory of false claims liability identified as services not rendered by USC  
22 surgeons and USC neurologists. (Chang Decl., ¶ 11.)

23           On October 1, 2021, AUSA Kortum requested Dr. Cheongsiatmoy personally  
24 attend a “Call with DOJ [Department of Justice]” wherein the United States expressly  
25 instructed Dr. Cheongsiatmoy and his counsel that they were not to communicate with  
26 participating government entity, Los Angeles County; when Ms. Chang asked AUSA  
27 Kortum to clarify if the United States was instructing Dr. Cheongsiatmoy’s counsel not  
28



1 to contact Los Angeles County about the investigation -- *or at all* -- AUSA Kortum  
 2 answered definitively: “Do not contact the County about any aspect of this case.” (Chang  
 3 Decl., ¶ 12.)

4 **D. United States’ Use of Seal to Give Defendant Unfair Advantage**

5 On November 22, 2021, after repeated requests as to whether the Government  
 6 Parties were communicating with the Defendant about Dr. Cheongsiatmoy’s *qui tam*  
 7 claims, AUSA Kortum informed Ms. Chang and Mr. Rushovich that the United States  
 8 had provided a copy of the operative Fourth Amended; yet, the United States refused to  
 9 address the “extent to which any of the complaints filed in this action were disclosed to  
 10 U.S.C.” (Chang Decl., ¶ 14.)

11 AUSA Kortum justified the United States’ disclosure of the Complaint to USC on  
 12 the basis of the Court’s June 23, 2020 Order Partially Lifting Seal permitting the United  
 13 States, in its discretion, to disclose allegations in the Complaint to the Defendant. (Chang  
 14 Decl., ¶ 14.) AUSA Kortum further admitted in his November 22, 2021 email that “based  
 15 on U.S.C.’s voluntary disclosure [Exhibit 89], the United States has deferred issuing Civil  
 16 Investigative Demands or conducting witness interviews; if negotiations with U.S.C. are  
 17 unsuccessful we’ll revisit the issue of the extent to which further investigative activity is  
 18 appropriate.” (Chang Decl., ¶ 14.)

19 On December 6, 2021, on a telephonic conference call attended by all  
 20 Government Parties, the United States finally admitted to Ms. Chang and Mr.  
 21 Rushovich that: (a) No participating government entity conducted any witness  
 22 interviews and no government entity requested and/or obtained from USC the witness  
 23 interviews which formed the basis of USC’s Disclosure. (b) The United States disclosed  
 24 to USC a copy of the original Complaint without exhibits on November 23, 2020. (c)  
 25 The United States disclosed to USC a copy of Exhibit 4 to the Complaint in response to  
 26 USC counsel’s statement that “As part of our audit and investigation, we have found no  
 27 evidence that USC falsely certified to LA County on a claim using CPT Code 95940, or  
 28



1 that USC submitted any claim to the county.” (d) The United States disclosed to USC a  
2 copy of the Fourth Amended Complaint without exhibits to defense counsel on October  
3 27, 2021. (Chang Decl., ¶ 15.)

4 On December 15, 2021 and again December 16, 2021, Ms. Chang raised concerns  
5 that the United States sought to settle with Defendant despite the United States’ admission  
6 that the United States had not disclosed the exhibits to the Complaint to Defendant.  
7 (Chang Decl., ¶ 16.).

8 Even worse, on December 17, 2021, the United States admitted that “the United  
9 States hasn’t had an opportunity to conduct a complete review of [the exhibits to the  
10 Complaint]” even though Ms. Chang sent the unredacted version of the most of exhibits  
11 to the Complaint to all participating government entities in March 2021. (Chang Decl., ¶  
12 17.)

13 On December 20, 2021, AUSA Kortum stated that it was the United States’  
14 position that disclosure of the exhibits to the Complaint to USC “wouldn’t advice [sic]  
15 the progress of this case in any meaningful way.” (Chang Decl., ¶ 19.)

16 On December 21, 2021, in response to the United States’ position that disclosure  
17 of the exhibits to USC “wouldn’t advice [sic] the progress of this case in any  
18 meaningful way,” Ms. Chang wrote all participating government entities reiterating that  
19 “the exhibits to the Complaint demonstrate that USC’s disclosures were made in bad  
20 faith; therefore, the United States’ ongoing refusal to disclose the exhibits to the  
21 Complaint to USC is preventing discussions with USC regarding the fraudulent nature  
22 of its Non-Confidential Voluntary Self-Disclosure. The United States’ use of the seal is  
23 therefore preventing resolution of the case and causing significant prejudice to Dr.  
24 Cheongsiatmoy’s ability to resolve his claims.” (Chang Decl., ¶ 20.)

25 On December 23, 2021, the United States finally disclosed all 150 exhibits to the  
26 Complaint to USC, 7 days prior to the end of the seal period; yet as of December 28,  
27 2021, just 2 days prior to the end of the seal period, AUSA Kortum still has not

1 responded to confirm Defendant's December 23, 2021 request to "confirm that relator  
2 has authorization under a Court order to share these exhibits and the complaint with Los  
3 Angeles County" to allow for good faith discussions. (Chang Decl., ¶ 28)

4 **E. State of California's Use of Seal to Give Defendant Unfair Advantage**

5 The State of California issued the sole investigative subpoena in this case. (Chang  
6 Decl., ¶ 23.) This statement is also supported by USC's Disclosure that it "has not  
7 received any notice from any federal health care program or agency that Keck Medicine  
8 of USC is under investigation for IONM claims to any such program." Exhibit 89 at 4.

9 USC's Disclosure incorporates by reference the State of California's November 1,  
10 2018 subpoena (Exhibit 89); yet for over 2 years, the State of California has refused to  
11 address the extent to which the State of California changed the "parameters of what  
12 USC agreed to produce" in light of USC's Disclosure which intentionally omitted any  
13 reference to the fraud USC committed at USC Keck Hospital and Los Angeles  
14 County+USC Medical Center. (Chang Decl., ¶ 23.)

15 Irreparable injury to current and future parties of interest caused by the State of  
16 California's deletion of evidence from Defendant's document production needs to be  
17 addressed before this case unseals. The State of California admitted that in November  
18 2020, it instructed the deletion of 217 documents produced by USC when it ordered  
19 eDiscovery vendor Elevate to "remove entirely with no backup" these 217 documents  
20 including "document native, images, searchable text and all coding related  
21 [information]" from Elevate's server. (Chang Decl., ¶¶ 13, 24-25.)

22 The State of California's explanations for its deletion of evidence were outlined  
23 in Mr. Neumeister's November 8, 2021 email ("Due to CDI's expiring contract with  
24 Elevate Services, CDI had to remove and transfer documents being held and serviced by  
25 Elevate Services") and again in Mr. Neumeister's December 21, 2021 letter  
26 ("documents [were] deleted from an eDiscovery vendor, which was requested by me per  
27 a contractual and budgeting issue..."). (Chang Decl., ¶ 13.) However, Mr. Neumeister's

1 explanations are not consistent with the written communications between him and  
 2 Elevate which show that Mr. Neumeister gave Elevate a completely different  
 3 explanation for the deletion of the documents which the State of California ordered  
 4 deleted “without backup” because “[the documents] have PHI on it.” (Chang Decl., ¶  
 5 25.)

6 The basis for Mr. Neumeister’s explanation to Elevate (which again, is a  
 7 completely different explanation from the one Mr. Neumeister provided to all  
 8 participating Government entities on November 8, 2021 and December 21, 2021) is not  
 9 warranted in light of the fact thousands of the remaining files in the database “had PHI  
 10 on it.” (Chang Decl., ¶ 25.) Yet, the State of California still “ask[ed] that Elevate  
 11 transfer the remaining docs to [a non-government] entity” -- former Relator’s counsel  
 12 Cotchett, Pitre & McCarthy -- a transfer the State of California specifically ordered to  
 13 occur only after hundreds of documents were deleted from the database USC produced  
 14 in response the sole investigative subpoena issued in this case. (Chang Decl., ¶ 25.)

15 The transfer of Defendant’s document production to Relator’s counsel by the  
 16 State of California in an ongoing matter should never have occurred absent a Court-  
 17 approved resolution. The spoliation of evidence by the State of California and its order  
 18 to transfer that spoliated evidence to a non-government entity, former Relator’s counsel,  
 19 should never have occurred under any circumstances.

#### 20 **F. Los Angeles County’s Use of Seal to Give Itself Unfair Advantage**

21 Since the filing of the *qui tam* action, Los Angeles County has repeatedly ignored  
 22 Relator’s repeated requests to participate in the investigation and has refused to allow  
 23 access to its records to investigate the false claims at Los Angeles County+USC  
 24 Medical Center, the hospital Los Angeles County owns and operates. (Chang Decl.,  
 25 ¶5.)

26 Instead, after Los Angeles County was made aware through the unredacted  
 27 exhibits to the original *qui tam* Complaint that surgeries at Los Angeles County+USC

1 Medical Center were not performed by USC teaching surgeons, Los Angeles County  
 2 "...added new [USC] neurosurgical attending coverage" at Los Angeles County+USC  
 3 Medical Center. Exhibit 49 at 3. The new [USC] neurosurgical attending coverage was  
 4 ordered by the Los Angeles County Board of Supervisors pursuant to the Medical  
 5 School Operating Agreement (MSOA)/Medical School Affiliation Agreement  
 6 (MSAA)/Professional Services Agreement (PSA) contracts between Los Angeles  
 7 County and USC as described in the Complaint.

8 On February 25, 2021, USC Counsel admitted to the United States: "we have  
 9 found no evidence that USC falsely certified to LA County on a claim using CPT Code  
 10 95940, or that USC submitted any claim to the county." (Chang Decl., ¶ 6.) This written  
 11 position of USC is directly contradicted by the evidence contained within the video  
 12 lodged with the Court as Exhibit 150 – the same video that Relators gave to all  
 13 participating government entities in April 2021.

14 On July 1, 2021, nearly 3 years after the *qui tam* was filed, Los Angeles County  
 15 wrote: "Our documentation shows that [Los Angeles County] already declined to  
 16 intervene in this action." (Chang Decl., ¶ 8.) Relator continues to be unaware of  
 17 documentation to support Los Angeles County's statement of declination, and Los  
 18 Angeles County has refused to provide this documentation, despite multiple requests  
 19 from July 2, 2021 through December 24, 2021. (Chang Decl., ¶¶ 8, 29.)

## 20 **G. Statements of Opposition**

21 On December 20, 2021, the United States advised that it intends to oppose any *ex*  
 22 *parte* application and asked Ms. Chang to attach "Document2" informing the Court of  
 23 the United States' opposition to the *ex parte* application. (Chang Decl., ¶ 19.)

24 On December 22, 2021, Ms. Chang informed all Government Parties that the  
 25 "Document2" which the United States asked Ms. Chang to submit to the Court contains  
 26 significant misrepresentations of communications which occurred between counsel.  
 27 (Chang Decl., ¶ 26.)

After Ms. Chang compared the true and correct copy of the November 26, 2021 email against the forged version contained within AUSA Kortum's "Document2" which AUSA Kortum instructed Ms. Chang to submit to the Court, Ms. Chang informed all Government Parties that significant portions of the true and correct communications were deleted, including AUSA Kortum's deletion of "conditions that Mr. Wilbanks set forth" as the reason why the Government Parties had not responded to multiple requests from Ms. Chang and Mr. Rushovich to meet and confer. (Chang Decl., ¶ 26.) After Ms. Chang informed AUSA Kortum that the "Document2" he instructed her to submit to the Court contained misrepresentations, AUSA Kortum did not respond. (Chang Decl., ¶ 26.)

On December 21, 2021, the United States wrote that it further intended to oppose any *ex parte* application because it had received authorization to file with the Court a "Notice of Non-Decision" because "the United States won't have received enough evidence to make an informed decision regarding intervention." (Chang Decl., ¶ 21.)

The United States made this December 21, 2021 statement despite the admissions it made on its October 1, 2021 "Call with DOJ" wherein the United States told Dr. Cheongsiatmoy and his counsel that "[the DOJ has] not been asking [Los Angeles County] for documents and [the DOJ has] not asked to look at their files." (Chang Decl., ¶ 12.) These admissions directly contradict Relator's guidance outlined in the November 27, 2018 to the United States and the State of California wherein Relator advised the government of key subpoena categories. (Chang Decl., ¶ 2.) Finally, on the December 6, 2021 teleconference, all participating government entities confirmed that no participating government entity conducted any witness interviews and no government entity requested and/or obtained from USC the witness interviews which formed the basis of USC's Disclosure. (Chang Decl., ¶ 15.)

There are 150 exhibits to the Complaint and Relators provided over 270 documents containing Relator's guidance for the government investigation, including

1 schematics and details of the false claims totaling hundreds of millions of dollars at  
2 USC Keck Hospital and Los Angeles County+USC Medical Center combined. (Chang  
3 Decl., ¶ 30.)

4 On December 21, 2021, the State of California advised that it intends to oppose  
5 any *ex parte* application and asked Ms. Chang to attach its December 21, 2021 letter as  
6 the State of California’s statement of opposition to the *ex parte* application. (Chang  
7 Decl., ¶ 22.)

8 The State of California has continued to refuse to disclose logs of evidence State  
9 of California instructed deleted and/or replaced from any datasets USC produced in this  
10 case. The State of California admitted to ordering the deletion of 217 documents  
11 produced by USC which were “remove[d] entirely with no backup” including  
12 “document native, images, searchable text and all coding related [information]” from  
13 the database of its eDiscovery vendor. (Chang Decl., ¶ 25.)

14 The State of California has also refused to provide information regarding any  
15 change in the parameters of the November 1, 2018 subpoena it issued in this case. After  
16 the State of California was advised that this would be included in the *ex parte*  
17 application, the State of California wrote in its December 21, 2021 response that it is  
18 “not sure what is meant by ‘parameters’ and [is] unable to fully respond.” (Chang Decl.,  
19 ¶ 23.)

20 On December 20, 2021 and again on December 24, 2021, Ms. Chang called Los  
21 Angeles County to notify it of Plaintiff-Relator’s intent to file this *ex parte* application  
22 and the information contained herein. (Chang Decl., ¶¶ 18, 29.) Los Angeles County did  
23 not respond to any efforts to meet and confer and did not object to the filing of this *ex*  
24 *parte* application.

25 On December 22, 2021, Ms. Chang called and emailed Wilbanks & Gouinlock to  
26 notify it of Dr. Cheongsiatmoy’s intent to file this *ex parte* application regarding  
27 Wilbanks & Gouinlock’s continued failure to provide Dr. Cheongsiatmoy his client file



1 despite his instructions on November 26, 2021 and again on December 20, 2021 to  
 2 email him all communications Wilbanks & Gouinlock received or submitted in this  
 3 case; Wilbanks & Gouinlock has not indicated whether it intends to oppose this *ex parte*  
 4 application. (Chang Decl., ¶ 27.)

5 On December 28, 2021, Ms. Chang and Mr. Rushovich attended a teleconference  
 6 at the request of defense counsel, Mark Hardiman who admitted that USC made  
 7 disclosures on or about August 2021 refunding \$75,949 to Medicare, Medi-Cal or other  
 8 government programs and \$297,778 to commercial plans for CPT 95940 for Keck  
 9 Hospital only (not Los Angeles+USC Medical Center); after defense counsel confirmed  
 10 the December 6, 2021 attestations of the Government Parties that the disclosures were  
 11 not made through the Government Parties (Chang Decl., ¶ 15.); Ms. Chang immediately  
 12 called and emailed Mr. Wilbanks to inform him that it was urgent that he provide all  
 13 communications his firm had with any party including USC counsel as Dr.  
 14 Cheongsiatmoy was never informed of any disclosures from Defendant other than the  
 15 March 27, 2020 USC Disclosure to the United States refunding \$79,405 and  
 16 \$89,223 and the disclosure Defendant made to California Department of Insurance in  
 17 August 2020 refunding \$316,544; as a Plaintiff-Relator with his own individual claims,  
 18 Dr. Cheongsiatmoy should have had the opportunity to review and rebut any disclosures  
 19 at the time they were made by Defendant. (Chang Decl., ¶ 30)

## 20 **II. LEGAL STANDARD**

21 “By providing for the seal provision, Congress intended to strike a balance between  
 22 ‘the purposes of *qui tam* actions [and] ... law enforcement needs [.]’ The purpose of *qui*  
 23 *tam* actions is to encourage more private false claims litigation. The other side of the  
 24 balance recognizes the need to allow the Government an adequate opportunity to fully  
 25 evaluate the private enforcement suit without tipping off the target to determine whether  
 26 it is in the Government's interest to intervene and take over the civil action. The seal  
 27



provision provides an appropriate balance between these two purposes by allowing the *qui tam* relator to start the judicial wheels in motion and protect his litigative rights, while allowing the government the opportunity to study and evaluate the relator's information for possible intervention in the *qui tam* action or in relation to an overlapping criminal investigation.” *U.S. ex. rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242, 245 (9<sup>th</sup> Cir. 1995).

The False Claims Act imposes on the government a duty to establish “good cause” in support of a request for extension of the seal period under 31 U.S.C. §3730(b)(3). Indeed, Courts have found that the Government’s interest in communicating with Defendant regarding settlement does not constitute “good cause” to justify a False Claims Act seal and such settlement communications during the seal investigation period “directly undermine a primary reason for sealing *qui tam* actions generally. *See Id; U.S. ex rel. Martin v. Life Care Centers of America, Inc.*, 912 F.Supp. 2d 618, 624 (E.D. Tenn. 2012).

A party seeking *ex parte* relief must establish why a motion cannot be calendared in a regular manner; that they will be irreparably prejudiced if the motion is heard in accord with regular procedures; and that the requesting party is without fault in creating the crisis that requires *ex parte* relief or that the crisis was due to excusable neglect. *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). “*Ex parte* applications are not intended to save the day for parties who have failed to present requests when they should have . . . .” In re Intermagnetics Am., Inc., 101 B.R. 191, 193 (C.D. Cal 1989).

### **III. ARGUMENT**

The purpose of the False Claims Act seal is to allow the Government an “adequate opportunity to fully evaluate” a Plaintiff-Relator’s *qui tam* allegations – it is not to allow the Government to use the seal to give the Defendant an unfair advantage outside the purview of the Relators and with prejudice to the Plaintiff-Relator’s individual claims

1 based on the same facts. *See U.S. ex. rel. Lujan*, 67 F.3d at 245; *U.S. ex rel. Martin*, 912  
2 F.Supp. at 624.

3 The Court issued the June 23, 2020 Order Partially Lifting Seal which afforded the  
4 United States the right, in its discretion, to disclose allegations and Complaints (and  
5 amendments thereto) to Defendant. The reasoning behind such permitted disclosure was  
6 to “help expedite the conclusion of the Governments’ investigation and the resolution of  
7 this *qui tam* action.” Contrary to the purpose of the seal and contrary to the purpose of  
8 Court’s partial unsealing order, the Government Parties used the June 23, 2020 Order  
9 Partially Lifting Seal to give the Defendant an unfair advantage at the expense of the  
10 whistleblower, Dr. Cheongsiatmoy. The Government’s actions in this case has caused  
11 ongoing and substantial prejudice to Plaintiff-Relator both as a *qui tam* Plaintiff and also  
12 as a Plaintiff with his own individual employment claims that are based on the same  
13 nucleus of facts.

14 To the extent the Government Parties argue that Relator consented to any partial  
15 lift of the seal to disclose his allegations to the Defendant, all participating government  
16 entities were made aware in writing in April 2021 that Relator IONM did not consent to  
17 a partial unsealing of the Complaint based on the fraudulent nature of the USC Disclosure  
18 which intentionally omitted any reference to the significant fraud which occurred at the  
19 hospitals, namely USC Keck Hospital and Los Angeles County+USC Medical Center.

20 Further, at the time that the June 23, 2020 Order Partially Lifting Seal was issued,  
21 Relator’s claims were limited to *qui tam* claims on behalf of the Government Parties. On  
22 May 5, 2021, the operative Complaint in this case was amended to add Plaintiff’s  
23 individual employment claims. Once Dr. Cheongsiatmoy became a Plaintiff in his own  
24 right and a party of interest in this case, the United States had a duty to use its discretion  
25 in executing the June 23, 2020 Order Partially Lifting Seal to ensure that Dr.  
26 Cheongsiatmoy’s individual claims were not subsumed by the Government Parties’  
27 interests.

1 It was not the Congressional intent for the Government to use the seal to give the  
2 Defendant an unfair advantage at the expense of the very Plaintiff who blew the whistle.  
3 The *qui tam* “seal” provision was added to the False Claims Act to encourage – not  
4 discourage -- more whistleblowers from reporting wrongdoing. It is against public policy  
5 for the Government Parties to use the seal to give the Defendant an unfair advantage at  
6 the expense of the whistleblower, Dr. Cheongsiatmoy; the prejudice caused by the  
7 Government Parties’ actions during the seal period needs to be addressed in a hearing  
8 with the Court prior to any unsealing of this case.

9 **IV. CONCLUSION**

10 For all of the foregoing reasons, Dr. Cheongsiatmoy respectfully requests that the  
11 Court order a hearing and the requested disclosures prior to unsealing the case.

12 Dated: December 28, 2021

ALICE CHANG

/s/ Alice Chang

Attorneys for Relator and Plaintiff-  
Relator